IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA THIRD APPELLATE DISTRICT

ROCKLIN UNIFIED SCHOOL DISTRICT,

Petitioner,

v.

PUBLIC EMPLOYMENT RELATIONS BOARD,

Respondent,

ROCKLIN TEACHERS PROFESSIONAL ASSOCIATION,

Real Party in Interest.

Petition for Writ of Extraordinary Relief from the Decision of the Public Employment Relations Board, PERB Decision No. 2939 (PERB Case No. SA-CE-3136-E)

RESPONDENT'S BRIEF

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA THIRD APPELLATE DISTRICT

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
California Rules of Court, rule 8.208

Court of Appeal Case Number: C103184

Case Name: *Rocklin Unified School District v. Public Employment Relations Board*

> Each party other than the [Public Employment Relations Board] must comply with the requirements of rule 8.208 concerning serving and filing a Certificate of Interested Entities or Persons. (Cal. Rules of Court, rule 8.728(d)(1).)

Dated: August 28, 2025

J. FELIX DE LA TORRE, General Counsel
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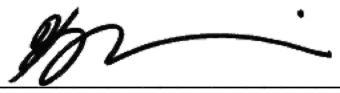
By 
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INTRODUCTION

The Educational Employment Relations Act (EERA or Act; Gov. Code, § 3540 et seq.) requires public school employers to meet and confer with their employees' chosen representative before deciding to change matters within the scope of representation—wages, hours and other terms and conditions of employment. (§§ 3543, subd. (a), 3543.2 (all undifferentiated references are to the Government Code).) The Legislature has entrusted the Public Employment Relations Board to administer the Act and protect fair collective bargaining over these matters.

In this case, the Board concluded that Rocklin Unified School District violated EERA by failing to meet and confer with the exclusive representative of the District's certificated staff, the Rocklin Teachers Professional Association. The District adopted a policy requiring Association-represented teachers and counselors to inform parents whenever their student requested to use a name or pronouns, or access facilities or activities, that do not align with the gender listed in the student's records. This parental notification policy would, in other words, require teachers and counselors to disclose a student's transgender or gender-nonconforming status to parents, even without the student's consent and where disclosure could put the student at risk of harm.

The Board found that this policy was within the scope of representation as a material change in teachers' and counselors' job duties, and so the District's failure to give adequate advance notice to and negotiate with the Association violated EERA. As

an alternative, the Board found that the District failed to bargain over the effects of the policy on staff.

The District primarily argues that the parental notification policy is not within the scope of representation, and therefore it was not required to negotiate before adopting the policy. The District also argues that it gave the Association adequate notice and opportunity to bargain. Finally, the District argues that it did attempt to bargain with the Association over the effects of the parental notification policy. These arguments fail.

The Board did not clearly err by concluding that the parental notification policy fell within the scope of representation. In reaching this conclusion, the Board relied on two distinct approaches: (1) case law finding that material changes in job duties are within the scope of representation; and (2) the three-part *Anaheim* test for subjects not specifically enumerated in EERA. (See *San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, 857-858 (*San Mateo*); *Anaheim Union High School District* (1981) PERB Decision No. 177, pp. 4-5 (*Anaheim*).) The District fails to demonstrate that the Board clearly erred under either approach.

As for the District's challenge to the Board's finding that the District failed to give the Association sufficient notice before adopting the notification policy, that finding is supported by substantial evidence in the record. The District gave the Association two days' notice of the policy changes before it was voted on for approval, which is not nearly enough time for the Association to review the changes, ask for information related to

the changes, bring the changes to its members, and fully bargain over the changes with the District. The District's belated argument that it actually gave an additional business day's notice does not change this analysis. Nor does the fact that the District has yet to implement the parental notification policy, as a unilateral change occurs upon the decision to make the change, not its implementation.

Finally, the District has not shown that the Board erred in determining that the District failed to bargain the effects of the notification policy. Although the District acknowledged it was required to bargain over the effects of the policy on terms and conditions of employment, the Board determined that the District premised its agreement to negotiate effects on policy changes that violate the state constitution and state law. The District argues that this state law infringes on parental rights under the federal Constitution, but it lacks standing to assert parents' rights.

In sum, the Board's decision is supported by longstanding Board precedent and substantial evidence in the record. Having failed to demonstrate any reversible error, the District's petition should be denied.

BACKGROUND

I. Facts

A. Teacher and Counselor Job Duties

The Association is the exclusive representative of a bargaining unit of certificated District employees, which includes Kindergarten through Grade 12 classroom teachers and guidance

counselors. (AR:I:11; II:900, 904 (administrative record citations are abbreviated "AR:[volume number]:[page number]").)

1. Classroom Teacher Job Duties

Among other duties, classroom teachers are typically required to do the following:

- "Provide a learning environment that allows for individual differences and respect for the dignity and worth of each student."
- "Develop goals and prepare and implement specific objectives for class according to Board Policies and Administrative Regulations. Goals are to be consistent with the philosophy of goals for the district."
- "Develop and implement lesson plans which are consistent with district policy and guidelines."
- "Maintain a behavioral climate in the classroom conducive to learning."
- "Communicate with students and parents on the educational and social progress of the student; interpret the school program to parents and students."
- "Adhere to the California Education Code, Title V, and carry out Board Policies and Administrative Procedures."
- "Abide by professional ethics standards established by Board Policy."
- "Demonstrate mutual respect and dignity."
- "Work cooperatively with the entire school staff to promote effective student learning experiences."

- "Prepare required forms, maintain accurate pupil academic records, attendance records, and cumulative student progress and achievement records and reports."
- "Maintain functional learning environments, including orderliness of equipment and materials assigned to the classroom."
- "Assume the responsibility for the safety and welfare of students."
- "Assume the responsibility for the safety and welfare or students whenever a danger is observed on or about campus."

(AR:II:900-901.)

2. Guidance Counselor Job Duties

Guidance counselors' primary objective is the "application of scientific principles of learning and behavior to improve school-related problems and to facilitate the learning and development of children in the [District]." (AR:II:904.) According to the District's job description, a guidance counselor, among other duties:

- "Advises students, parents, and guardians for the purpose of providing information of students' academic progress."
- "Coordinates with teachers, resource specialists and/or community (e.g., courts, child protective services, etc.) for the purpose of providing requested information, gaining needed information, and/or making recommendations."

- "Counsels students, parents, and guardians for the purpose of enhancing student success in school."
- "Monitors student records for the purpose of developing plans and/or providing information regarding students' goals."
- "Prepares documentation (e.g., observations, progress, contacts with parents, teachers, outside professionals, etc.) for the purpose of providing written support, developing recommendations and/or conveying information."
- "Consults with parents, school and community resources, and students in helping to develop the best educational programs for children."
- "Provides appropriate consultive services to assist school staff members to better understand behavior and learning patterns of children and to apply these understandings in promoting an improved climate for learning."

(AR:II:904-905.)

B. The District's Regulations Before September 2023

1. The Nondiscrimination/Harassment Policy

The District is governed by policies and regulations established by its board of trustees. (AR:II:800.) The District has a "nondiscrimination/harassment" policy, Administrative Regulation 5145.3. (AR:II:871-878.) Before the 2023-2024 school

year, this policy prohibited discrimination against transgender and gender-nonconforming students as follows:

> Gender identity of a student means the student's gender-related identity, appearance, or behavior as determined from the student's internal sense, whether or not that gender-related identity, appearance, or behavior is different from that traditionally associated with the student's physiology or assigned sex at birth.
>
> Gender expression means a student's gender-related appearance and behavior, whether stereotypically associated with the student's assigned sex at birth. (Education Code 210.7.)
>
> Gender transition refers to the process in which a student changes from living and identifying as the sex assigned to the student at birth to living and identifying as the sex that corresponds to the student's gender identity.
>
> Gender non-conforming student means a student whose gender expression differs from stereotypical expectations.
>
> Transgender student means a student whose gender identity is different from the gender assigned at birth.
>
> The district prohibits acts of verbal, nonverbal, or physical aggression, intimidation, or hostility that are based on sex, gender identity, or gender expression, or that have the purpose or effect of producing a negative impact on the student's academic performance or of creating an intimidating, hostile, or offensive educational environment, regardless of whether the acts are sexual in nature.

(AR:II:875.)

The policy lists examples of prohibited conduct, including "[r]evealing a student's transgender status to individuals who do not have a legitimate need for the information, without the student's consent." (AR:II:876.)

The policy also recognizes that a student's transgender or gender-nonconforming status is the student's private information, which the District will only disclose with the student's prior written consent. (AR:II:876.) The only exception to the written consent requirement was when "required by law or when the district ha[d] compelling evidence that disclosure [was] necessary to preserve the student's physical or mental well-being." (AR:II:876.)

The policy requires the Superintendent or their designee to take "appropriate disciplinary action against . . . employees . . . determined to have engaged in wrongdoing in violation of district policy." (AR:II:873-874.)

2. The Parent Rights and Responsibilities Policy

The District also has a "parent rights and responsibilities" policy, Administrative Regulation 5020. (AR:II:867-869.) This policy gives parents and guardians the right to, among other things, observe instructional activities, meet with the child's teacher, be notified of their child's absence from school, and "have a school environment for their child that is safe and supportive of learning." (AR:II:867.)

C. The District's Proposed Parental Notification Policy

During an August 9, 2023 meeting, the District's board of trustees formed a subcommittee to investigate the issue of parents' rights, without specifically referring to transgender or gender-nonconforming students. (AR:II:723-724.)

On September 4, the District posted the agenda for the next board of trustees meeting, scheduled for September 6. (AR:I:726.) The agenda contained a proposed resolution from the parents' rights subcommittee to adopt a parental notification policy requiring certain District employees to inform parents and guardians of students' transgender or gender-nonconforming status. (AR:I:865.)

Specifically, the subcommittee proposed to amend the District's "parent rights and responsibilities" policy by adding a new paragraph giving parents and guardians the right:

> To be notified within three (3) school days when their child requests to be identified as a gender other than the child's biological sex or gender; requests to use a name that differs from their legal name (other than a commonly recognized nickname) or to use pronouns that do not align with the child's biological sex or gender; requests access to sex-segregated school programs and activities, or bathrooms or changing facilities that do not align with the child's biological sex or gender. Notification shall be made by the classroom teacher, counselor, or site administrator. Such notification shall only be delayed up to 48 hours to fulfill mandated reporter requirements when a staff member in conjunction with the site administrator determines based on credible evidence

> that such notification may result in substantial jeopardy to the child's safety.

(AR:II:869.)

The subcommittee also proposed amending the "nondiscrimination/harassment" policy to except "parental notification" from the statement that "[a] student's transgender or gender-nonconforming status is the student's private information." (AR:II:876.)

D. The Association's Demands to Bargain the Notification Policy

The Association learned about the proposed amendments on September 4, when the District publicly posted the meeting agenda. The District's superintendent told the Association's president that he should "probably look at the Board docs when they're made public." (AR:II:726-727.)

That same day, the Association sent the District a cease-and-desist letter. (AR:II:880-881.) The Association asserted that the proposed amendments were unlawful, and demanded that the District withdraw the resolution to approve the amendments. (AR:II:880.) If the District did vote to enact the amendments, the Association demanded to bargain regarding the impacts and effects of the policy change. (AR:II:881.)

On September 5, the Association reiterated its request that the board of trustees reject the proposed amendments or postpone adoption until the parties were able to bargain. (AR:II:883-885.) The Association received no response from the District or the trustees before the September 6 meeting. (AR:II:731.)

The September 6 meeting was described as "chaotic," with "exceptionally higher" attendance than normal, and "exhaustive hours of public comment" causing the meeting to last until the early hours of the next morning. (AR:II:731-732.) Most of the comments—coming from teachers, community members, students, parents, counselors, and lawyers—opposed the amended policies. (AR:II:732, 735.) Nevertheless, the board of trustees passed the resolution amending the two administrative regulations. (AR:I:105; II:735.)

Two days after the meeting, the Association filed an unfair practice charge with PERB, alleging that the District violated EERA when it failed to bargain before adopting the amendments. (AR:I:7-21.)

In an e-mail the same day, Associate Superintendent Tony Limoges acknowledged receipt of the Association's cease-and-desist letter and unfair practice charge. (AR:I:106; II:887.) He stated that the District "fully intends to [b]argain the impacts and effects of the amendments" to the policies and offered negotiation dates. (AR:I:106-107; II:887.)

On September 20, the Association sent a letter demanding that the District "restore the status quo by rescinding the policy entirely before the Association will agree to bargain its effects." (AR:II:890.)

On October 6, the District responded, refusing to rescind the parental notification policy and agreeing to negotiate only the policy's effects. (AR:II:893-894.)

The Association responded with a letter again demanding that the District rescind the policy, stating that it would "not acquiesce to the District's unilateral change by engaging in bargaining over its effects" and would "not agree to new job duties that would require unit members to violate the law and unreasonably expose them to liability." (AR:II:896.)

The District declined to rescind the parental notification policy, and the parties did not engage in effects negotiations. (AR:II:841.) The District has stated that it has not implemented the policy, but it has not taken any official action to suspend the policy. (AR:II:735.)

E. The California Department of Education Investigation and Order

The day after the board of trustees meeting, the California Department of Education (CDE) received a complaint alleging that the District's adoption of the parental notification policy would "disproportionately impact the safety of LGBTQ+ students in Rocklin and is discriminatory against their right to a safe educational environment." (AR:I:91.) CDE conducted an investigation and issued a report. (AR:I:91-102.) CDE found that the District's notification policy violated Education Code section 220 by discriminating against students who "identify[] with or express[] a gender other than that identified at birth." (AR:I:96.)

CDE ordered the District to inform students and school personnel that the notification policy would not be implemented. (AR:I:96.)

The District refused to comply and requested reconsideration of CDE's report. (AR:I:193.) CDE denied the District's request. (AR:I:193-195.) CDE confirmed that the District's parental notification policy was discriminatory against students' constitutionally protected privacy interests in their gender identity. (AR:I:195.)

The District still refused to rescind the parental notification policy or carry out the corrective actions. (AR:II:751.) CDE filed a petition for writ of mandate to enforce its order. (Petn. for Writ of Mandate Pursuant to Code Civ. Proc. § 1085, *California Dept. of Education v. Rocklin Unified School Dist.* (Super. Ct. Placer County, 2024, No. S-CV-0052605).) The case is currently stayed pending resolution of this case and other related litigation. (May 12, 2024, Law and Motion Minutes, *California Dept. of Education v. Rocklin Unified School Dist.* (Super. Ct. Placer County, 2024, No. S-CV-0052605).)

F. The Attorney General's Lawsuit against Chino Valley Unified School District and January 2024 Legal Alert

Other California school districts have adopted similar parental notification policies. At a public meeting in July 2023, the Chino Valley Unified School District adopted a policy that requires, among other things, school staff to notify parents and guardians if their student is requesting to be identified or treated as a gender other than the student's biological sex or gender listed in the student's birth certificate or other official records. (AR:I:249, 263-264.)

The California Attorney General filed an action against Chino Valley on the grounds that the parental notification policy is unconstitutional under the Equal Protection Clause of the California Constitution. (AR:I:78-84.) On January 11, 2024, the San Bernardino Superior Court issued a preliminary injunction enjoining implementation of the policy. (*Ibid.*)

That same day, the Attorney General issued a statewide legal alert to all county and district superintendents, charter school administrators, county office, school board, and charter school boards, titled "Forced Disclosure Policies re: Transgender and Gender Nonconforming Students." (AR:I:86-89.) The purpose of the alert was to "remind all school boards that forced gender identity disclosure policies—which target transgender and gender-nonconforming students by mandating that school personnel disclose a student's gender identity or gender nonconformity to a parent or guardian without the student's express consent—violate state law." (AR:I:86.)

The legal alert explained that such forced disclosure policies are illegal because they violate California's Equal Protection Clause; statutory prohibitions on discrimination based on gender, gender expression, and gender identity; and student's constitutional right to privacy with respect to how and when to disclose their gender identity. (AR:I:86-89.)

G. The SAFETY Act

On July 15, 2024, Assembly Bill 1955, the Support Academic Futures and Educators for Today's Youth (SAFETY) Act, was enacted. (AR:I:516-519; Assem. Bill No. 1955 (2023-

2024 Reg. Sess.).) The SAFETY Act "prohibit[s] school districts . . . from enacting or enforcing any policy, rule, or administrative regulation that requires an employee or a contractor to disclose any information related to a pupil's sexual orientation, gender identity, or gender expression to any other person without the pupil's consent unless otherwise required by law." (Assem. Bill No. 1955 (2023-2024 Reg. Sess.); Ed. Code, § 220.5, subd. (a).) If any school district adopts a policy, regulation, guidance, directive or other action inconsistent with this statute, it will be invalid and not have any force or effect. (Ed. Code, § 220.5, subd. (c).) Further, a school district employee "shall not be required to disclose any information related to a pupil's sexual orientation, gender identity, or gender expression to any other person without the pupil's consent unless otherwise required by state or federal law." (Ed. Code, § 220.3, subd. (a).) The statutes state that these provisions "[do] not constitute a change in, but [are] declaratory of, existing law." (Ed. Code, §§ 220.3, subd. (b); 220.5, subd. (b).)

II. Procedural History

Acting on the Association's unfair practice charge (AR:I:7-21), PERB's Office of the General Counsel issued an administrative complaint alleging that the District adopted the parental notification policy without negotiating with the Association over the decision or its effects on terms and conditions of employment. (AR:I:47-48.)

The matter was assigned to an administrative law judge. After a formal hearing (AR:II:683-860) and post-hearing briefing

(AR:I:116-142, 144-160, 165-171, 173-188), the ALJ issued a proposed decision finding against the District (AR:I:201-245). The District appealed the proposed decision by filing exceptions with the Board itself. (AR:I:498-511.)

The Board's decision denied the District's exceptions. (AR:I:636-675.) The Board found that the District violated EERA by: (1) adopting the notification policy without giving the Association notice or an opportunity to negotiate; and (2) premising its agreement to negotiate over the effects and implementation of the policy on changes that violate the California Constitution and state law. (AR:I:637.)

STANDARD OF REVIEW

The standard of review in a petition for a writ of extraordinary relief from a Board decision is deferential to PERB. PERB has exclusive initial jurisdiction to adjudicate alleged violations of EERA (§§ 3541.3, 3541.5), and express authority to "determine in disputed cases whether a particular item is within or without the scope of representation" (§ 3541.3, subd. (b)). "PERB is one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect." (*Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 911-912, internal quotation marks omitted.)

On questions of EERA interpretation, the court must decide the statute's true meaning, but the Board's construction

"will not be set aside unless clearly erroneous." (*Boling*, *supra*, 5 Cal.5th 898, 904.)

As for factual questions, the Board's findings, "if supported by substantial evidence on the record considered as a whole, are conclusive." (§ 3542, subd. (c).) This means the court does not reweigh the evidence or consider whether contrary findings would also be reasonable. (*Boling*, *supra*, 5 Cal.5th 898, 912.)

The petitioner for a writ of extraordinary relief bears the burden of establishing error. (*Butte View Farms v. Agricultural Labor Relations Bd.* (1979) 95 Cal.App.3d 961, 966, fn. 1.) This burden generally cannot be met by raising issues not first presented to the Board. (*Carian v. Agricultural Labor Relations Bd.* (1984) 36 Cal.3d 654, 668, fn. 6.) If the petitioner fails to establish reversible error, the court may summarily deny the petition. (See *Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Bd.* (1979) 24 Cal.3d 335, 350-351.)

ARGUMENT

I. The Board did not err in determining that the District violated EERA by adopting the parental notification policy without giving the Association adequate advance notice and opportunity to bargain.

The Board has long held that "a unilateral change in the terms and conditions of employment" is a per se violation of a public sector employer's duty to bargain in good faith. (*Stockton Unified School District* (1980) PERB Decision No. 143, p. 22.) Such unilateral changes have an "inherently destabilizing and detrimental effect on the bargaining relationship" between

employers and unions. (*City of Montebello* (2016) PERB Decision No. 2491-M, p. 10.)

To establish that an employer made an unlawful unilateral change under EERA, the exclusive representative must prove four elements:

1) The employer changed or deviated from the status quo;
2) The change or deviation concerned a matter within the scope of representation;
3) The change or deviation had a generalized effect or continuing impact on bargaining unit employees' terms or conditions of employment; and
4) The employer made its decision to enact the change without first providing adequate advance notice of the proposed change to the exclusive representative and bargaining in good faith over the decision until the parties reached an agreement or a lawful impasse.

(*Bellflower Unified School District* (2021) PERB Decision No. 2796, p. 9.)

The Board determined that the Association proved each of these elements. (AR:I:660-668.) The District's opening brief challenges only two of them, arguing primarily that the parental notification policy falls outside the scope of representation, and that the District gave the Association adequate notice of the changes. (Opening Brief (OB) 12-22.) As discussed further below, the Board did not clearly err in finding the policy changes within the scope of representation, and substantial evidence

supports the Board's finding that the District failed to give the Association reasonable notice of the policy change.

A. The Board did not clearly err in determining that the parental notification policy was within the scope of representation.

EERA specifically defines the scope of representation as including "matters relating to wages, hours of employment, and other terms and conditions of employment." (§ 3543.2.) For topics that are not specifically enumerated in EERA, the Board has established a three-step test for determining whether these items are within the scope of representation. (*San Mateo*, *supra*, 33 Cal.3d 850, 857-858; *Anaheim*, *supra*, PERB Decision No. 177, pp. 4-5.) An unenumerated item must be bargained if:

> "(1) it is logically and reasonably related to hours, wages, or an enumerated term and condition of employment,
> (2) the subject is of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict, and
> (3) the employer's obligation to negotiate would not significantly abridge [its] freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the [employer's] mission."

(*San Mateo*, *supra*, 33 Cal.3d 850, 857-858, quoting *Anaheim*, *supra*, PERB Decision No. 177, pp. 4-5.) This is known as the *Anaheim* test.

The Board may take two approaches in utilizing the *Anaheim* test. It can apply the test from scratch and examine each *Anaheim* element. Or it can apply subject-specific

standards that implement the test, as there is no need to "reinvent the wheel" for a subject the Board has previously considered. (*West Valley-Mission Community College District* (2024) PERB Decision No. 2917, p. 16; *The Accelerated Schools* (2023) PERB Decision No. 2855, pp. 14-15.)

In conducting a thorough analysis of the District's parental notification policy, the Board took both approaches. (AR:I:662-663.) The Board found that the amendments were negotiable both using the subject-specific standard for employee job duties and applying the *Anaheim* test "from scratch." (AR:I:663-666.)

The Board's alternate bases for reaching its conclusion are both entitled to significant deference, as PERB's construction of the statutory provision defining the scope of representation "falls squarely within PERB's legislatively designated field of expertise." (*San Mateo*, *supra*, 33 Cal.3d 850, 856, citing § 3541.3, subd. (b).) As discussed in the next sections, the District has not shown that either of the Board's conclusions is clearly erroneous.

1. The District's policy changed certificated employees' job duties, which fall within the scope of representation under subject-specific PERB case law.

The Board has consistently held that changes to job duties, assignments, workload, and performance standards generally fall within the scope of representation. (*County of Santa Clara* (2022) PERB Decision No. 2820-M, p. 7; *Cerritos Community College District* (2022) PERB Decision No. 2819, p. 30 (*Cerritos*).) The test for determining whether an employer has materially

changed employee job duties is whether they are "reasonably comprehended" within employees' prior duties or assignments. (*State of California (California Correctional Health Care Services)* (2022) PERB Decision No. 2823-S, pp. 10-12 (*Correctional Health*); *Cerritos*, *supra*, at pp. 30-31.) This is "an objective standard that refers to what a reasonable employee would comprehend based on all relevant circumstances, including, but not limited to, past practice, training, and job descriptions." (*Correctional Health*, *supra*, at p. 10; *County of Santa Clara*, *supra*, at p. 6.)

Under the previous "nondiscrimination/harassment" policy, District teachers and counselors were only required to disclose a student's transgender or gender-nonconforming status without the student's prior written consent if disclosure was required by law or if there was compelling evidence that disclosure was necessary to preserve the student's physical or mental well-being. (AR:II:876.)

The Board found that this policy "was directly in line" with employees' understanding of their job duties. (AR:I:663.) Teacher job duties specifically include a requirement to follow the Education Code (AR:II:900), which limits disclosure of a student's gender identity. (Ed. Code, § 220.3, subd. (a).) However, the District's new parental notification policy violates the Education Code. (See § II.B, below.)

The Board relied on testimony from Association President Travis Mougeotte, who expressed concerns that employees would face consequences from the California Commission on Teacher

Credentialing if they complied with the parental notification policy. (AR:II:752.) The Commission has the authority to suspend, revoke, or take other action against a teacher's credential if they violate state law regarding classroom conduct, which could potentially leave a teacher unemployed and unemployable as a teacher. (AR:II:753.)

Mougeotte also testified that compliance with the parental notification policy conflicts with teachers' previous understanding that they were not expected to go against students' wishes except when necessary to keep them safe. (AR:II:742-743.) Mougeotte provided an example of a teacher who was conflicted about their legal responsibilities when a student requested to go by a different name but specifically did not want that information communicated to their parents. (AR:II:754-755.) Under the new policy, teachers are now required to risk their credentials and employment and invade students' privacy even absent a legal requirement or safety risk. In light of the District's previous policy, the new requirements are not reasonably comprehended within employees' prior understanding of their duties.

The District argues that teachers are already expected to communicate with parents, even without student consent, about the "social progress of the student." (OB 14.) And counselors are required to consult with parents "in helping to develop the best educational programs for children." (*Ibid.*)

But consulting with parents about social progress and educational programs—broad directives that leave teachers and counselors significant discretion—is a far cry from informing

parents about a student's transgender or gender-nonconforming status. The policy now imposes a specific, affirmative disclosure requirement that is entirely unrelated to "social progress" or "educational programs." Informing parents about a student's request to use a different name or pronoun or to access different activities or facilities is not the same as an educational program or even the vaguely termed student's "social progress." And requiring teachers to make these disclosures in violation of the Education Code is certainly not contemplated by these parent communication duties.

To support its contention that some communications with parents are outside the scope of representation, the District relies on *Beverly Hills Unified School District* (2008) PERB Decision No. 1969 (*Beverly Hills*). (OB 14.) In that case, the union "acknowledge[d] that the [school district] had no duty to meet and confer over its decision to require teachers to provide examinations to parents upon request," and the Board limited its discussion to whether there were negotiable effects of that decision. (*Beverly Hills*, *supra*, at pp. 9-12.). But the District's reliance on this case is incorrect for several reasons.

First, *Beverly Hills* is not about the scope of representation, and is not precedent on that issue. (*City of Palo Alto v. Public Employment Relations Bd.* (2016) 5 Cal.App.5th 1271, 1292 ["'cases are not authority for propositions not considered'"].) Second, the type of communication contemplated in *Beverly Hills*—providing students' examinations to their parents for review outside the classroom—is different from the type of

communication required by the District's new policy: informing parents about a student's gender identity without their consent. In looking at the former, the Board examined only whether providing parents with students' examinations impacted work hours, and the Board found it did not. (*Beverly Hills*, *supra*, PERB Decision No. 1969, pp. 9-12.) As discussed above, however, requiring teachers to disclose whenever a student asks to go by a name or use facilities or participate in activities that conflict with the gender on their records, asks teachers to violate state law and guidance and actively dismantle trust within the school environment. *Beverly Hills* is inapposite here.

The District further points to the Family Educational Rights and Privacy Act (FERPA; 20 U.S.C. § 1232g), which it argues invalidates California state law pursuant to the Supremacy Clause of the federal Constitution. (OB 15.) The District cites federal regulations implementing FERPA and the California Education Code, which provide parents the right to access their child's educational records, including records regarding a child's request to change their name or access facilities and programs. (34 C.F.R. §§ 99.3-99.4; Ed. Code, § 49069.7.) But these authorities requiring access to educational records do not require affirmative disclosures of transgender or gender-nonconforming status, as the District's parental notification policy does. (AR:II:869.) In addition, student nicknames are not identified in a formal record. (AR:II:762-763.) Nor has the District presented authority showing that law or District policy requires it to maintain records containing the

other information to be disclosed under the parental notification policy, such as requests for access to sex-segregated facilities or activities. Thus, the conduct governed by the District's parental notification policy and state law are not covered by the authorities the District cites.

The District has failed to demonstrate that the Board clearly erred by determining that the District's new parental notification requirements were material changes to job duties, falling within the scope of representation.

2. The District's policy changes fall within the scope of representation under the *Anaheim* test.

Although the Board was on solid footing to determine the scope of representation using existing case law as to when changes to job duties satisfy the *Anaheim* test, the Board reached the same conclusion by applying the *Anaheim* test from scratch. (AR:I:666.)

a. The District's policy changes are related to terms and conditions of employment.

Anaheim's first prong asks whether the subject is "logically and reasonably related to hours, wages, or an enumerated term and condition of employment." (*San Mateo*, *supra*, 33 Cal.3d 850, 858; *Anaheim*, *supra*, PERB Decision No. 177, p. 4.) As discussed in the preceding section, this prong is satisfied because the District's parental notification policy is related to employees' job duties.

b. The District's policy changes are of such concern to both management and employees that conflict is likely to occur.

The second *Anaheim* prong requires the subject to be "of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict." (*San Mateo*, *supra*, 33 Cal.3d 850, 858; *Anaheim*, *supra*, PERB Decision No. 177, p. 4.) The Board correctly found that management-employee conflict over this issue was "evidenced by the unfair practice charge currently before us (and by others like it that have already been resolved or are currently pending at other PERB divisions), as well as by employees' participation during the District Board's public meeting on the subject." (AR:I:666.)

There is ample evidence in the record that employees raised concerns about the notification policy to the District. Mougeotte described the board of trustees meeting where the notification policy amendments were discussed as "[c]haotic, circus like." (AR:II:731.) Attendance was higher than usual, with more attendees than could fit in the meeting room. (*Ibid.*) There were "exhaustive hours of public comment, mostly not in favor of the amended policies," including from teachers and counselors. (AR:II:732.) At the meeting, teachers specifically "expressed the changes in working conditions and duties they'd be responsible for" and "spoke about concerns of eroding trust and culture and support of students in their classroom." (AR:II:733.) Teachers also expressed concerns about whether the

amendments were in violation of state law and students' constitutional rights, and if following the policy would jeopardize their credentials. (AR:II:733.) Because of the extensive amount of comments, the meeting lasted into the "early hours of the morning." (AR:II:731.)

The District does not dispute that the policy changes have created conflict, but asserts that collective bargaining is not the appropriate means of resolving the conflict. (OB 16.) Rather, the District argues that the "conflict between a student's right to privacy in their gender identity and a parent's right to direct the upbringing of their child is a policy question best left to the legislature." (*Ibid.*) This argument misrepresents the underlying issue. The focus of the Board's decision is on the changes that the parental notification policy makes to employee job duties. So the question is whether collective bargaining is the appropriate means of resolving the conflict over those duties—not a purported conflict between students' and parents' constitutional rights. EERA and longstanding case law have determined that it is.

Finally, the District objects that under the Board's reasoning, it must bargain with the Association every time it adopts a new policy. (OB 17.) That is true, however, only for policies that satisfy the *Anaheim* test; it is not true for other District policies.

c. Bargaining with the Association would not significantly abridge the District's managerial prerogatives.

Anaheim's third prong requires PERB to find that "the employer's obligation to negotiate would not significantly abridge [its] freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the District's mission." (*San Mateo*, *supra*, 33 Cal.3d 850, 858; *Anaheim*, *supra*, PERB Decision No. 177, pp. 4-5.)

The Board correctly noted that there was "no exigency that required the District to adopt the parental notification policy without providing notice and an opportunity to bargain to [the Association]." (AR:I:666.) In other words, the District did not demonstrate that the obligation to negotiate the policy change interferes with its managerial prerogatives. The District does not dispute that there was no exigency that required it to adopt the policy without bargaining. (See OB 17-18.) In fact, these policies existed for years without any changes; prior to the amendments at issue here, the "parent rights and responsibilities policy" remained unchanged since its adoption in 2005 (AR:II:867), and the last amendment to the "nondiscrimination/harassment policy" was in 2020 (AR:II:871). And the District has represented that its new policy remains on hold pending this litigation (OB 8), further belying any urgency to adopt it without bargaining.

The District's argument rests, rather, on the notion that bargaining at all would abridge its managerial prerogatives. (OB 17.) The Board found that the parental notification policy could not be "essential to the achievement of the District's mission" as

it was both unlawful and unrelated to the core educational mission of a school district. (AR:I:666.) The District argues that it has a managerial prerogative "to inform parents about their children's affairs" and that gender identity, "LGBTQ+ Americans," and human diversity are part of the curriculum mandated by Education Code section 51204.5. (OB 17-18.) But the District's managerial prerogative cannot include adopting a policy that violates state law. (See § II.B., below.) Nor is parental notification of students' transgender or gender-nonconforming status analogous to curriculum requirements cited by the District, which are subject to consultation with the Association rather than bargaining (see § 3543.2, subd. (a)(3)).

If the District wants to adopt policies to meet lawful objectives, it need only provide the Association with notice and an opportunity to bargain. As the Board explained, the District's bargaining obligation is "a low burden." (AR:I:666.) The District need not agree to the Association's proposals; it is only required to bargain in good faith and reach impasse before it can implement a lawful proposal. (*Ibid.*, citing *Oakland Unified School District* (2023) PERB Decision No. 2875, pp. 15-16.) Thus, so long as the District bargains in good faith with the Association, it still may implement policy changes absent agreement. Thus, the District has failed to demonstrate that a requirement to negotiate the parental notification policy significantly abridged its managerial prerogatives.

The Board did not clearly err by determining that the District's parental notification policy was within the scope of representation.

B. Substantial evidence supports the Board's finding that the District failed to give the Association reasonable notice of the policy change.

EERA requires a public school employer to give the exclusive representative "reasonable written notice" of its "intent to make any change to matters within the scope of representation of the employees represented by the exclusive representative." (§ 3543.2, subd. (a)(2).) To allow a meaningful opportunity to bargain, the employer must provide enough notice before reaching a firm decision to allow the representative time to decide whether to request information, demand bargaining, consult its members, acquiesce to the change, or take other action. (*City of Sacramento* (2013) PERB Decision No. 2351-M, pp. 29-30.)

The Board determined that the District gave notice on September 4 that the board of trustees would be considering the notification policy at its September 6 meeting. (AR:I:668.) This two days' notice "could not possibly suffice for [the Association] to decide whether to request information, demand bargaining, consult its members, and then bargain in good faith." (AR:I:668.) The District's arguments against this conclusion—that it gave notice on September 1 and that it has not yet implemented the notification policy—lack merit.

1. Even if the District gave notice on September 1, three business days' notice would not suffice.

The District argues that the Board erred because the District actually gave notice on September 1, not September 4. (OB 19.) This argument fails procedurally and substantively.

Procedurally, the ALJ found that the Association "did not know of the proposed amendments until the District Board's agenda was posted sometime prior to or on September 4, 2023." (AR:I:226.) The District did not challenge this finding in its exceptions. (AR:I:498-511.) The District cannot claim the Board erred by failing to find that the District gave notice on September 1. (*Carian*, *supra*, 36 Cal.3d 654, 668, fn. 6.)

Substantively, even if it were true that the District gave notice on September 1, that was a Friday—meaning the District gave at most three business days' notice instead of two. (AR:II:726.) While, as the Board noted, the "amount of notice that is 'reasonable' necessarily varies under the circumstances of each case" (AR:I:667), it cannot be argued that one additional day of notice would be enough under the circumstances of this case.

The District argues that the Association had enough notice to "respond in force" to the meeting agenda on September 4 and 5—so it had enough time to demand bargaining. (OB 19.) It is true that the Association sent letters on these dates objecting to the proposed policy. (AR:II:880-881, 883-885.) But the Board did not find that the District merely failed to give the Association enough time to *demand* bargaining. Rather, it found that the District failed to give adequate notice for the Association "to

decide whether to request information, demand bargaining, consult its members, and then bargain in good faith." (AR:I:668.)

By comparison, cases where the Board has found an employer provided adequate notice typically involve more than a few days' notice. (See, e.g., *Trustees of the California State University* (2009) PERB Decision No. 1876a-H, p. 11 [six months]; *State of California (Departments of Corrections & Rehabilitation and Personnel Administration)* (2010) PERB Decision No. 2115-S, p. 8 [four months]; *Metropolitan Water District of Southern California* (2009) PERB Decision No. 2055-M, p. 5 [almost five months]; *Compton Community College District* (1989) PERB Decision No. 720, p. 15 [two months].) While the amount of required notice may vary in any case, the District's proposal involved a significant policy change impacting multiple stakeholders—employees, students, and parents—and the District does not claim there was any exigency to adopt its policy here. Therefore, the District's claim that it gave three business days' notice here does not overcome the Board's conclusion that the District failed to give sufficient notice and opportunity to bargain.

2. The fact that the District has yet to implement the notification policy does not undermine the Board's finding of a unilateral change.

The District also argues that the Association "has received proper notice" of the notification policy because the District has not yet implemented the policy. (OB 19.) This argument is contrary to well-settled case law.

Under PERB precedent, a unilateral change occurs upon the employer's decision to change terms and conditions of employment without bargaining—not upon implementation of the decision. For instance, the Board has found a violation of the duty to bargain where the employer has announced, but not yet implemented, a change (*Clovis Unified School District* (2002) PERB Decision No. 1504, p. 22), or rescinded the change before it took effect (*County of Sacramento* (2008) PERB Decision No. 1943-M, p. 12). The Board has explained that "[t]he fact that the [employer] reversed its position and restored the status quo before the new policy went into effect, does not cure the unlawful unilateral change." (*Ibid.*) Similarly, a unilateral change violation "occurs on the date when the employer made a firm decision to change the policy, even if the change itself is not scheduled to take effect until a later date or never takes effect." (*City of San Diego* (2015) PERB Decision No. 2464-M, p. 51.)

These cases apply the well-settled rule that the employer must give the exclusive representative the opportunity to bargain *before* "arriving at a firm decision." (*Victor Valley Union High School District* (1986) PERB Decision No. 565, pp. 4-5.) Because the District's board of trustees adopted the notification policy on September 6, 2023, it cannot dispute that it has made a firm decision. In fact, the District admits as much. (OB 20.) Its failure to implement its decision does not excuse the unilateral change to terms and conditions of employment. (*Clovis Unified School District*, *supra*, PERB Decision No. 1504, p. 22.)

The time that has passed since the District adopted the parental notification policy does not count as sufficient notice to the Association for bargaining. The Board has determined that parties cannot have "meaningful good faith negotiations" after an employer has made a unilateral decision. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 15.) Once an employer has unilaterally imposed terms, the union is forced into a position of having to bargain back to the status quo. (*Id.*)

Thus, substantial evidence supports the Board's finding that the District did not give adequate notice and opportunity to bargain.

II. The Board did not err in determining that the District unlawfully failed to bargain the effects of the notification policy.

As an alternative to finding that the notification policy itself fell within the scope of representation, the Board held that the District failed to bargain the effects of the notification policy on employees' terms and conditions of employment. (AR:I:671.) Even when an employer's policy decision does not directly change a matter within the scope of representation, the employer must negotiate over the reasonably foreseeable effects of the change on matters that are within the scope of representation. (*Internat. Assn. of Fire Fighters, Local 188, AFL-CIO v. Public Employment Relations Bd.* (2011) 51 Cal.4th 259, 276-277.)

Here, there is no dispute that the notification policy had negotiable effects on certificated employees. The District offered to bargain the effects after it adopted the policy. But the Board found the District's offer lacking because the District premised its

agreement to negotiate on policy changes that violated the state constitution and state law. (AR:I:671.)

The District claims that the Board lacked authority to determine that the policy violated the state constitution and state law. (OB 22.) But, as discussed below, it is well settled that the Board may consider "external" law—i.e., law outside the Board's statutory jurisdiction—when necessary to determine an unfair practice case properly before the agency.

And the District does not challenge the Board's interpretation of external law; its only argument is that state law infringes on parental rights under the federal Constitution. But the District, as a political subdivision of the State, lacks standing to raise that argument.

A. The Board may consider external law when deciding issues within its jurisdiction.

The District argues that "PERB does not have jurisdiction to direct or interpret compliance with statutory obligations outside of the EERA," such as the Education Code and constitutional provisions. (OB 22.) But the Board's lack of jurisdiction does not mean it is powerless even to consider this external law.

To the contrary, the courts have consistently recognized that PERB may construe its statutes in light of external law when necessary to resolve unfair practice allegations or to avoid conflicts with those other laws. (*Cumero v. Public Employment Relations Bd.* (1989) 49 Cal.3d 575, 583, 586-587; *San Diego Municipal Employees Assn. v. Super Ct.* (2012) 206 Cal.App.4th

1447, 1458; *Public Employment Relations Bd. v. Super. Ct.* (1993) 13 Cal.App.4th 1816, 1828 [constitutionally-based affirmative defense does not deprive PERB of jurisdiction to proceed with a hearing and issue a final decision on all issues in the case]; *Leek v. Washington Unified School Dist.* (1981) 124 Cal.App.3d 43, 51-53.) "[I]t is 'settled precedent that PERB may construe employee relations laws considering constitutional precedent.'" (*City of Palo Alto*, *supra*, 5 Cal.App.5th 1271, 1288.)

In this case, it was necessary for PERB to consider the Education Code and state constitutional provisions to evaluate the Association's allegation that the District's offer to bargain the effects of the notification policy was premised on acceptance of an unlawful underlying policy. It would be anomalous to conclude—and the District does not contend—that the Association had to accept an unlawful policy in order to exercise its right to bargain under EERA.

It bears noting, too, that the Board was not alone in concluding that the District's policy violated state law. Two other state agencies—the Attorney General's Office and CDE—reached similar conclusions. (AR:I:85-89, 91-96.) The Board referenced these conclusions when it noted that "compliance with the parental notification policy would require certificated employees to engage in conduct that the State of California has said violates state law." (AR:I:670.)

The District notes that at the time the Board issued its decision, two superior courts came to different conclusions about the lawfulness of parental notification policies—with one

enjoining a school district's policy and the other denying an injunction. (OB 21.) But the District offers no authority or persuasive reason why this meant the Board was required to abstain from deciding the case in front of it.

The Board recognizes that its conclusion as to the legality of the notification policy under the Education Code and California Constitution is not entitled to deference; it must stand or fall on its own merits.

B. The District does not dispute that the policy violated the state constitution and state law.

Although the District points out that "California superior courts were not unanimous on the issue of whether parental notification policies violated students' rights" (OB 21), its brief does not include any argument for why the Board's conclusion was mistaken. Superior court decisions are not citable authority. (*Aixtron, Inc. v. Veeco Instruments Inc.* (2020) 52 Cal.App.5th 360, 399, disapproved on other grounds by *Vo v. Technology Credit Union* (2025) 108 Cal.App.5th 632.) And, in any event, a mere citation to two conflicting trial court orders does not make an argument in support of the District's position.

By failing to cite applicable authority or develop its argument, the District has forfeited any argument that the Board was wrong about state law or the state constitution. As this Court has explained, "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.] When a point is asserted without

argument and authority for the proposition, it is deemed to be without foundation and requires no discussion by the reviewing court. [Citations.] Hence, conclusory claims of error will fail." (*County of San Joaquin v. Public Employment Relations Bd.* (2022) 82 Cal.App.5th 1053, 1081, brackets in original, internal quotation marks omitted.)

As a result, the Court should reject the District's conclusory claim that the notification policy does not conflict with state law and the state constitution.

C. Even if the Court were to consider this issue on the merits, the District's policy violates state law and the state constitution.

1. The notification policy violates Education Code section 220.

The Education Code provides that "[n]o person shall be subjected to discrimination on the basis of . . . gender, gender identity, [or] gender expression . . . in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid." (Ed. Code, § 220.) This provision applies to the District as a public school district.

The District's notification policy runs afoul of this provision. A policy that mandates involuntary disclosures for one group but not another "reflect[s] . . . unexamined role stereotypes," and is considered "discriminatory on its face." (*Arp v. Workers' Comp. Appeals Bd.* (1977) 19 Cal.3d 395, 406-407.) The District's notification policy singles out students who "request[] to be identified as a gender other than the child's

biological sex or gender; request[] to use a name that differs from their legal name (other than a commonly recognized nickname) or to use pronouns that do not align with the child's biological sex or gender; request[] access to sex-segregated school programs and activities, or bathrooms or changing facilities that do not align with the child's biological sex or gender." (AR:II:869.) By distinguishing students based on their transgender or gender-nonconforming status, the policy singles out "that group alone" for discriminatory treatment and violates state antidiscrimination law. (*Isbister v. Boys' Club of Santa Cruz, Inc.* (1985) 40 Cal.3d 72, 89; see also *Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 35.)

Subsequent legislation, in the form of the SAFETY Act, helps resolve doubts about whether the District's policy violated Education Code section 220. Education Code sections 220.3 and 220.5, enacted July 15, 2024, prohibit school districts from requiring school employees to "disclose any information related to a pupil's sexual orientation, gender identity, or gender expression to any other person without the pupil's consent unless otherwise required by state or federal law." (Ed. Code, §§ 220.3, subd. (a), 220.5, subd. (a).) Both statutes are "declaratory of[] existing law." (Ed. Code, §§ 220.3, subd. (b), 220.5, subd. (b).)

If—as here—the courts have not conclusively interpreted a statute, a subsequent Legislature's declaration of the statute's meaning "is entitled to consideration," even if it is not binding. (*Dept. of Finance v. Com. on State Mandates* (2022) 85 Cal.App.5th 535, 573-574, internal quotation marks omitted.)

The court "cannot accept the Legislative statement that an unmistakable change in the statute is nothing more than a clarification and restatement of its original terms," but "[m]aterial changes in language, however, may simply indicate an effort to clarify the statute's true meaning." (*Id.* at p. 574, internal quotation marks omitted.)

Looking to a subsequent legislative declaration is particularly appropriate "when the Legislature promptly reacts to the emergence of a novel question of statutory interpretation." (*Dept. of Finance*, *supra*, 85 Cal.App.5th 535, 574, internal quotation marks omitted.) That is what happened here. The District—and others, such as Chino Valley and Temecula Valley—began adopting parental notification policies in 2023. The Legislature promptly reacted to this development the following year by adopting Education Code sections 220.3 and 220.5 to clarify that school districts may not require notification by their employees.

Therefore, the Board correctly concluded that the District's policy violated state law.

2. The policy violates students' rights under California's equal protection clause.

Sex and gender are protected classes under California's equal protection clause, and discrimination based on gender triggers strict scrutiny. (*Catholic Charities of Sacramento, Inc. v. Super. Ct.* (2004) 32 Cal.4th 527, 564.) Discrimination against transgender and gender-nonconforming individuals likewise constitutes discrimination on these grounds. (See *Bostock v.*

Clayton County, Georgia (2020) 590 U.S. 644, 660-661 [interpreting Title VII].)

Strict scrutiny also applies when government action restricts equal access to public education, which is a protected right under the California Constitution. (*O'Connell v. Super. Ct.* (2006) 141 Cal.App.4th 1452, 1465, citing *Butt v. State of California* (1992) 4 Cal.4th 668, 685-686, 692.)

For the notification policy to satisfy strict scrutiny, the District must establish that: (1) the policy serves a compelling government interest; and (2) the policy's distinctions are necessary and narrowly tailored to further that purpose. (*In re Marriage Cases* (2008) 43 Cal.4th 757, 832; *Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 33, 43.)

The District has claimed that its policy is compelled by parents' rights to make decisions about their child's health. (OB 24.) This interest does not meet the District's burden under strict scrutiny. That is because a student's decision to be identified as a gender other than their biological sex does not inevitably implicate their health. There is no medical decision to be made; the school is not being asked to provide gender-affirming care or any other form of health care. And to the extent the District believes it is a *mental* health issue requiring parental involvement, this is precisely the type of "outdated social stereotype[]" that cannot supply a compelling interest. (*Sail'er Inn, Inc. v. Kirby* (1971) 5 Cal.3d 1, 18.)

But even if there were a compelling government interest in parental notification, the District's policy is not necessary or

narrowly tailored. The District must show there is not a non-discriminatory alternative that would impose a lesser burden on the constitutional interest. (*People v. Son* (2020) 49 Cal.App.5th 565, 590.) A parent's interest in information about their children's health can be served by a neutral policy of informing parents when *any* student, regardless of transgender or gender-nonconforming status, exhibits symptoms of serious mental health issues such as depression.

Because the District's policy singles out transgender and gender-nonconforming students regardless of actual mental health symptoms, it fails strict scrutiny.

3. The policy violates students' right to privacy.

The California Constitution expressly recognizes a right of privacy (Cal. Const. art I, § 1), which applies to "minors, as well as adults." (*Poway Unified Sch. Dist. v. Super. Ct. (Copley Press)* (1998) 62 Cal.App.4th 1496, 1505.)

An individual has a constitutionally protected privacy interest in their sexual orientation and gender identity. (See, e.g., *Pettus v. Cole* (1996) 49 Cal.App.4th 402, 444-445 ["sexual orientation and conduct"].) Transgender identity is "excruciatingly private and intimate" information. (*Powell v. Schriver* (2d Cir. 1999) 175 F.3d 107, 111.)

Among the reasons for acknowledging that privacy interest are the "discrimination, harassment, and violence" faced by transgender individuals "because of their gender identity." (*Whitaker By Whitaker v. Kenosha Unified School Dist.* (7th Cir.

2017) 858 F.3d 1034, 1051, abrogation on other grounds recognized by *Ill. Republican Party v. Pritzker* (7th Cir. 2020) 973 F.3d 760; see also *Grimm v. Gloucester County School Bd.* (4th Cir. 2020) 972 F.3d 586, 610-611.) Mandatory disclosure policies also intrude on students' ability to express their core values and identity. (See *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 335-339 [policy requiring minors to obtain parental consent for abortion violated constitutional right to privacy because it burdened a "decision . . . so central to the preservation of [a minor's] ability to define and adhere to her ultimate values regarding the meaning of human existence and life"].) As the California Supreme Court has explained, "[p]rivacy rights . . . have psychological foundations emanating from personal needs to establish and maintain identity and self-esteem by controlling self-disclosure." (*Hill v. Nat. Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 25.) It cannot be denied that information about one's basic identity as transgender or gender nonconforming is the type of interest protected by the California Constitution.

"Where the case involves an obvious invasion of an interest fundamental to personal autonomy, e.g., freedom from involuntary sterilization or the freedom to pursue consensual familial relationships, a 'compelling interest' must be present to overcome the vital privacy interest." (*Hill*, *supra*, 7 Cal.4th 1, 34.) For the reasons explained above at pages 53-54, there is no compelling interest in parental notification because transgender or gender-nonconforming status does not necessarily implicate

the parental right to participate in a child's medical treatment. If there are signs of a true mental health issue—depression or another serious condition—those signs may (and should) be disclosed regardless of transgender or gender-nonconforming status.

Therefore, the notification policy violates the constitutional right to privacy.

D. The District lacks standing to assert that state law violates parents' rights under the federal Constitution.

Rather than disputing that notification policies violate provisions of state law and the state constitution, the District asserts that those provisions "infringe on the substantive due process rights of parents, under the Fourteenth Amendment of the U.S. Constitution, to raise their children and decide how to handle health care issues." (OB 23.) But the District lacks standing to assert parental rights.

"A public school district is a political subdivision of the State of California," and "may not challenge state action as violating [its] rights under the due process or equal protection clauses of the Fourteenth Amendment." (*West Contra Costa Unified School Dist. v. Super. Ct.* (2024) 103 Cal.App.5th 1243, 1273-1274 (*West Contra Costa*); see also *Oakland Unified School Dist. v. Public Employment Relations Bd.* (2025) 112 Cal.App.5th 725, 758.)

The District also may not challenge state law based on the rights of parents. First, the District may not attempt to generate such a challenge by adopting a policy that openly conflicts with

state law. (See *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1068 [government official "generally has no authority to disregard [a] statutory mandate based on the official's own determination that the statute is unconstitutional"].)

Nor does the District have standing to litigate parents' rights. California courts have recognized that government entities may in some instances assert the constitutional rights of their constituents. (See, e.g., *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 677 [city permitted to raise equal protection challenge on behalf of its constituents].) As this Court has stated the rule, "a political subdivision of the state may challenge the constitutionality of a statute or regulation on behalf of its constituents where the constituents' rights under the challenged provision are 'inextricably bound up with' the subdivision's duties under its enabling statutes." (*Central Delta Water Agency v. State Water Resources Control Bd.* (1993) 17 Cal.App.4th 621, 629.)

Here, parents' rights are not inextricably bound up with the District's duties under its enabling statutes. The District's primary duty is to educate *students* in accordance with the State's directives—to serve as "the State's agent[] for local operation of the common school system." (*Butt*, *supra*, 4 Cal.4th 668, 680-681.) In other words, the core of the District's mission is to provide "access to a public education," which "is a uniquely fundamental personal interest in California." (*Id.* at p. 681.)

Given this mission, it is unsurprising that some authority implies that a school district can challenge state law by asserting its students' constitutional rights. For instance, the U.S. Supreme Court in one case "allowed a local school board seeking to defend a busing integration program to challenge a state initiative on equal protection grounds because the initiative 'use[d] the racial nature of an issue to define the governmental decisionmaking structure, and thus impose[d] substantial and unique burdens on racial minorities.'" (*West Contra Costa*, *supra*, 103 Cal.App.5th 1243, 1275, quoting *Washington v. Seattle School Dist. No. 1* (1982) 458 U.S. 457, 470, alterations in original; but see *id.* at p. 1276, quoting *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank* (9th Cir. 1998) 136 F.3d 1360, 1363 [*Washington v. Seattle School Dist. No. 1* "'does not constitute binding authority with respect to standing'"].)

But even if a school district may challenge state law as violating its students' rights, it would not follow that it could do so for violating the rights of the *parents*. This is especially true when, as the District admits, there is a conflict between the "child's constitutional right to privacy" and the "parent's constitutional interest in their child's health." (OB 23.) Siding with parents in this constitutional controversy is not "'inextricably bound up with' the [District's] duties under its enabling statutes." (*Central Delta Water Agency*, *supra*, 17 Cal.App.4th 621, 629.)

Allowing the District to assert parents' rights would be particularly anomalous because parents themselves have been

denied standing to challenge laws or policies restricting notification of transgender or gender-nonconforming status, absent a concrete possibility that the policy has "impacted or been shown to imminently impact their children." (*Chino Valley Unified School Dist. v. Newsom* (E.D.Cal., Apr. 17, 2025, No. 2:24-cv-01941-DJC-JDP) 2025 WL 1151004, *4 [rejecting challenge to AB 1955]; see also *Parents Protecting Our Child, UA v. Eau Claire Area Sch. Dist., Wis.* (7th Cir. 2024) 95 F.4th 501, 505-506; *John & Jane Parents 1 v. Montgomery County Bd. of Education* (4th Cir. 2023) 78 F.4th 622, 629-631.) Rather, courts have allowed parents to challenge these policies only where they alleged that they were not informed of their own child's desire to socially transition at school. (See, e.g., *Regino v. Staley* (9th Cir. 2025) 133 F.4th 951, 965; *Foote v. Ludlow School Committee* (1st Cir. 2025) 128 F.4th 336, 343; *Littlejohn v. School Board of Leon County, Florida* (11th Cir. 2025) 132 F.4th 1232, 1236.)

Therefore, the District lacks standing to claim that state law violates parents' constitutional rights.

E. Even if the District had standing to raise this argument, it would fail.

The District claims that state law restricting parental notification policies "infringe[s] on the substantive due process rights of parents, under the Fourteenth Amendment of the U.S. Constitution, to raise their children and decide how to handle health care issues." (OB 23.)

For the proposition that parental notification policies implicate students' health, the District relies primarily on a

federal district court case, *Mirabelli v. Olsen* (S.D.Cal. 2025) 761 F.Supp.3d 1317. That non-binding order concluded that "parents *do* have a constitutional right to be accurately informed by public school teachers about their student's gender incongruity that could progress to gender dysphoria, depression, or suicidal ideation, because it is a matter of health." (*Id.* at p. 1332, italics in original.) This chain of reasoning does not follow because, as noted, a student's decision to identify as a gender other than their biological sex does not inevitably implicate their health.

Other cases on which the District relies recognize parents' general rights over the custody and health of their children (OB 23), but provide no compelling guidance for this case. In *Troxel v. Granville* (2000) 530 U.S. 57, the Supreme Court held that a state law allowing third parties to petition for visitation rights conflicted with parents' rights to raise their children.

In *Parham v. J.R.* (1979) 442 U.S. 584—which the District quotes out of context—the Court stated that parents "retain a substantial, if not the dominant, role" in children's healthcare decisions, but also held that children whose parents seek to commit them to a mental health facility have their own constitutional right to have that decision confirmed by a "physician's independent examination and medical judgment." (*Id.* at p. 604.)

Pierce v. Society of Sisters (1925) 268 U.S. 510 and *Meyer v. Nebraska* (1923) 262 U.S. 390 discuss parents' rights regarding the education of their children. In *Pierce*, the Court held that parents have a right to send their children to private school; the

state cannot mandate that they attend public school. In *Meyer*, the Court overturned a criminal conviction, finding that states cannot prohibit parents from hiring a German-language teacher for their child. Neither case supports a rule that parents have a constitutional right to dictate the policies or conduct of public school staff.

Finally, in *Keates v. Koile* (9th Cir. 2018) 883 F.3d 1228, the Ninth Circuit determined that a parent and child plausibly alleged that a social worker violated their rights to "familial association" when they removed the child from the parent's custody after the child attempted suicide. The court relied on cases finding a constitutional "guarantee 'that parents will not be separated from their children without due process of law except in emergencies.'" (*Id.* at p. 1236.) This guarantee has no application to the subject of parental notification policies.

As a result, the District has failed to show that its parental notification policy is compelled by the federal Constitution.

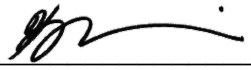
CONCLUSION

For the foregoing reasons, the District has failed to meet its burden of demonstrating reversible error in the Board's decision. The Board therefore requests that the Court deny the District's petition and affirm the Board's decision.

Dated: August 28, 2025

Respectfully submitted,

J. FELIX DE LA TORRE, General Counsel
JOSEPH W. ECKHART, Deputy General Counsel

By 
Kimberly J. Procida, Senior Regional Attorney

Attorneys for Respondent
PUBLIC EMPLOYMENT RELATIONS BOARD

COUNSEL'S CERTIFICATE OF COMPLIANCE WITH CALIFORNIA RULES OF COURT 8.204(c)(1)

Counsel of Record hereby certifies that pursuant to rule 8.204(c)(1) of the California Rules of Court, the enclosed brief of Respondent Public Employment Relations Board is produced using 13-point Century Schoolbook font and contains, including footnotes, 11,077 words, which is less than the maximum—14,000 words—permitted by this rule. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: August 28, 2025

Kimberly J. Procida, Senior Regional Attorney
Declarant
PUBLIC EMPLOYMENT RELATIONS BOARD

PROOF OF SERVICE
C.C.P. 1013a

COURT NAME: In the Court of Appeal for the State of California, Third Appellate District,

CASE NUMBER: C103184

PERB DEC. NO.: 2939, PERB Case No. SA-CE-3136-E

CASE NAME: *Rocklin Unified School District v. Public Employment Relations Board; Rocklin Teachers Professional Association*

I declare that I am a resident of or employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within entitled cause. I am an employee of the Public Employment Relations Board, 1031 18th Street, Sacramento, CA 95811-4124.

On August 28, 2025, I served an electronic copy of **Respondent's Brief** on the Third District Court of Appeal pursuant to California Rules of Court, rule 8.44(b), satisfying service on the Supreme Court of California.

On August 28, 2025, I served the **Respondent's Brief** regarding the above referenced case on the parties listed below:

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[X] (BY TRUEFILING) I electronically served the document(s) via TRUEFILING on the recipients designated above pursuant to California Rule of Court, Rule 8.70.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 28, 2025, at Sacramento, California.

Maryna Maltseva	*Maltseva M.*
(Type or print name)	(Signature)